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**Time Warner Cable<sup>1</sup> and Communications Workers of America, Local 1120.** Case 2-CA-30252

August 5, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on March 28, 1997, the General Counsel of the National Labor Relations Board issued a complaint on May 20, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 2-RC-21521. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 3, 1997, the General Counsel filed a Motion for Summary Judgment. On July 7, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 21, 1997, the Respondent filed a response.

**Ruling on Motion for Summary Judgment**

In its answer and response the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's disposition of a determinative challenged ballot in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup>

<sup>1</sup> Formerly Paragon Communications d/b/a Paragon Cable of Newburgh, New York.

<sup>2</sup> Member Higgins did not participate in the underlying representation proceeding. However, he agrees with his colleagues that the Re-

On the entire record, the Board makes the following

**Findings of Fact**

**I. JURISDICTION**

At all material times, the Respondent, a New York corporation, with an office and place of business in Newburgh, New York, has been engaged in the business of providing cable television services to the public.

Annually, the Respondent, in the course and conduct of its business operations, purchases and receives goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the rerun election held October 6, 1995, the Union was certified on January 15, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service technicians, installer technicians, warehouse coordinators, customer service representatives, production staff, and dispatchers employed by Respondent at its 400 Auto Park Place, Newburgh, New York facility, but EXCLUDING all sales and advertising employees, including advertisement sales coordinators, contracting inspectors, administrative assistants, confidential employees, including the customer service representative/administrative service, and guards, professional employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

On March 3, 1997, the Union requested the Respondent to bargain, and, since about March 6, 1997,

spondent has raised no new issues in this "technical" 8(a)(5) proceeding and that summary judgment is, therefore, appropriate.

<sup>3</sup> The Respondent's answer states that the Respondent is without knowledge or information sufficient to form a belief as to whether the Union is a 2(5) labor organization. However, by entering into a Stipulated Election Agreement in the underlying representation proceeding, the Respondent effectively agreed that the Union is a labor organization. At no time during the underlying representation proceeding did the Respondent raise a question concerning the Union's status as a 2(5) labor organization. Accordingly, we find that the Respondent is precluded from litigating the matter in this proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

the Respondent has failed and refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing on and after March 6, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Time Warner Cable, Newburgh, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Communications Workers of America, Local 1120 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time service technicians, installer technicians, warehouse coordinators, customer service representatives, production

staff, and dispatchers employed by Respondent at its 400 Auto Park Place, Newburgh, New York facility, but EXCLUDING all sales and advertising employees, including advertisement sales coordinators, contracting inspectors, administrative assistants, confidential employees, including the customer service representative/administrative service, and guards, professional employees, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Newburgh, New York, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 28, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 5, 1997

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Communications Workers of America, Local 1120 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time service technicians, installer technicians, warehouse coordinators, customer service representatives, production staff, and dispatchers employed by us at our 400 Auto Park Place, Newburgh, New York facility, but EXCLUDING all sales and advertising employees, including advertisement sales coordinators, contracting inspectors, administrative assistants, confidential employees, including the customer service representative/administrative service, and guards, professional employees, and supervisors as defined in the Act.

TIME WARNER CABLE